

AMENDED IN ASSEMBLY MAY 10, 2001
AMENDED IN ASSEMBLY APRIL 17, 2001
AMENDED IN ASSEMBLY MARCH 28, 2001

CALIFORNIA LEGISLATURE—2001–02 REGULAR SESSION

ASSEMBLY BILL

No. 873

Introduced by Assembly Member Harman

February 22, 2001

An act to amend Sections 2024 and 2040 of the Family Code, to amend Sections 5003, 5302, and 21111 of, to add Part 4 (commencing with Section 5600) to Division 5 of, and to repeal Section 6202 of, the Probate Code, relating to nonprobate transfers.

LEGISLATIVE COUNSEL'S DIGEST

AB 873, as amended, Harman. Nonprobate transfers: former spouses.

Existing law provides for the transfer of property upon death by various means, including wills, trusts, joint tenancies, insurance policies, and retirement death benefits, among others. Existing law permits a trustee with a power of appointment to distribute property to beneficiaries according to the terms of the trust. Existing law permits the structuring of certain financial accounts so that they will be payable to one person upon the death of another. Existing law permits vehicles to be owned in joint tenancy and, upon death of one of the parties, that ownership may pass to another joint tenant. Existing law provides that dissolution of a marriage revokes a bequest of property made in a will to a former spouse, and revokes a beneficiary designation to a former spouse under the Public Employees' Retirement System, as specified.

Existing law provides that dissolution of marriage prohibits a former spouse from receiving the spouse's share under intestate succession.

This bill would provide that specified property transfers to a transferor's spouse upon death would fail if, at the time of death, that person is no longer the transferor's surviving spouse, as defined, except where the transfer is not subject to revocation at time of death, or where there is clear and convincing evidence that the transfers intended to preserve the transfer to the former spouse. This bill would except provisions in life insurance policies from the definition of specified property transfers subject to the provisions described above. The bill would provide that a joint tenancy created between a decedent and the decedent's former spouse is severed if it was created before or during marriage and, at the time of death, the former spouse is not the decedent's surviving spouse, except as specified. The bill would also provide for the property rights of a person who subsequently purchases or encumbrances property in good faith, and would provide that a specified affidavit or declaration in this regard may be recorded. By increasing the duties of local officials processing these documents, this bill would create a state-mandated local program. The bill would provide that holders of certain property may transfer the property in accordance with provisions of specified instruments despite possible inconsistencies with the rights of a person named as a beneficiary, except as specified. The bill would permit a court to award damages and fees when a notice of a person claiming an interest *in* certain property is determined to have been filed in bad faith. The bill would delete the definition of spouse from the California Statutory Will. The bill would also make related and conforming changes. The bill would be operative on January 1, 2002, but would provide that specified provisions do not apply if the decedent making the nonprobate transfer or creating the joint tenancy dies, or if the dissolution of a marriage terminating the status of a beneficiary occurs, before that date.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement, including the creation of a State Mandates Claims Fund to pay the costs of mandates that do not exceed \$1,000,000 statewide and other procedures for claims whose statewide costs exceed \$1,000,000.

This bill would provide that, if the Commission on State Mandates determines that the bill contains costs mandated by the state,



reimbursement for those costs shall be made pursuant to these statutory provisions.

Vote: majority. Appropriation: no. Fiscal committee: yes. State-mandated local program: yes.

The people of the State of California do enact as follows:

1 SECTION 1. Section 2024 of the Family Code is amended to
2 read:

3 2024. (a) A petition for dissolution of marriage, nullity of
4 marriage, or legal separation of the parties, or a joint petition for
5 summary dissolution of marriage, shall contain the following
6 notice:

7 “Dissolution or annulment of your marriage may automatically
8 ~~change cancel~~ your spouse’s ~~right to such things as~~ *rights under*
9 ~~your will, trust benefits, retirement death benefits, trust,~~
10 ~~retirement benefit plan,~~ power of attorney ~~designation,~~ pay on
11 death bank ~~accounts~~ *account,* transfer on death vehicle
12 registration, ~~and~~ survivorship rights to any property ~~taken~~ *owned*
13 *in joint tenancy, and any other similar thing.* It does not
14 automatically cancel your spouse’s rights as beneficiary of your
15 life insurance policy. ~~If you do not want the dissolution or~~
16 ~~annulment of your marriage to interfere with the named~~
17 ~~beneficiary on these things, you must make that intention clear.~~
18 ~~Your rights to such things as~~ *policy. If these are not the results that*
19 *you want, you must change your will, trust, account agreement, or*
20 *other similar document to reflect your actual wishes.*

21 *Dissolution or annulment of your marriage may also*
22 *automatically cancel your rights under your spouse’s will, trust*
23 ~~benefits, retirement death benefits~~ *benefit plan,* power of attorney
24 ~~designation,~~ pay on death bank ~~accounts~~ *account,* transfer on
25 death vehicle registration, and survivorship rights to any property
26 ~~taken in joint tenancy may also be automatically changed upon~~
27 ~~dissolution or annulment of your marriage~~ *owned in joint tenancy,*
28 *and any other similar thing.* It does not automatically cancel your
29 rights as beneficiary of your spouse’s life insurance policy. ~~You~~

30 *You* should review these matters, as well as any credit cards,
31 other credit accounts, insurance policies, retirement benefit plans,
32 and credit reports to determine whether they should be changed or
33 whether you should take any other actions in view of the



1 dissolution or annulment of your marriage, or your legal
 2 separation. However, some changes may require the agreement of
 3 your spouse or a court order (see Part 3 (commencing with Section
 4 231) of Division 2 of the Family Code).”

5 (b) A judgment for dissolution of marriage, for nullity of
 6 marriage, or for legal separation of the parties shall contain the
 7 following notice:

8
 9 “Dissolution or annulment of your marriage may automatically
 10 ~~change cancel~~ your spouse’s ~~right to such things as~~ *rights under*
 11 ~~your will, trust benefits, retirement death benefits, trust,~~
 12 ~~retirement benefit plan,~~ power of attorney ~~designation,~~ pay on
 13 death bank ~~accounts~~ *account,* transfer on death vehicle
 14 registration, ~~and~~ survivorship rights to any property ~~taken~~ *owned*
 15 *in joint tenancy, and any other similar thing.* It does not
 16 automatically cancel your spouse’s rights as beneficiary of your
 17 life insurance ~~policy. If you do not want the dissolution or~~
 18 ~~annulment of your marriage to interfere with the named~~
 19 ~~beneficiary on these things, you must make that intention clear.~~
 20 ~~Your rights to such things as~~ *policy. If these are not the results that*
 21 *you want, you must change your will, trust, account agreement, or*
 22 *other similar document to reflect your actual wishes.*

23 *Dissolution or annulment of your marriage may also*
 24 *automatically cancel your rights under* your spouse’s will, trust
 25 ~~benefits, retirement death benefits~~ *benefit plan,* power of attorney
 26 ~~designation,~~ pay on death bank ~~accounts~~ *account,* transfer on
 27 death vehicle registration, ~~and~~ survivorship rights to any property
 28 ~~taken in joint tenancy may also be automatically changed upon~~
 29 ~~dissolution or annulment of your marriage~~ *owned in joint tenancy,*
 30 *and any other similar thing.* It does not automatically cancel your
 31 rights as beneficiary of your spouse’s life insurance policy. ~~You~~

32 *You* should review these matters, as well as any credit cards,
 33 other credit accounts, insurance policies, retirement benefit plans,
 34 and credit reports to determine whether they should be changed or
 35 whether you should take any other actions in view of the
 36 dissolution or annulment of your marriage, or your legal
 37 separation.”

38
 39 SEC. 2. Section 2040 of the Family Code is amended to read:



1 2040. (a) In addition to the contents required by Section
2 412.20 of the Code of Civil Procedure, the summons shall contain
3 a temporary restraining order:

4 (1) Restraining both parties from removing the minor child or
5 children of the parties, if any, from the state without the prior
6 written consent of the other party or an order of the court.

7 (2) Restraining both parties from transferring, encumbering,
8 hypothecating, concealing, or in any way disposing of any
9 property, real or personal, whether community, quasi-community,
10 or separate, without the written consent of the other party or an
11 order of the court, except in the usual course of business or for the
12 necessities of life, and requiring each party to notify the other party
13 of any proposed extraordinary expenditures at least five business
14 days before incurring those expenditures and to account to the
15 court for all extraordinary expenditures made after service of the
16 summons on that party.

17 Notwithstanding the foregoing, nothing in the restraining order
18 shall preclude a party from using community property,
19 quasi-community property, or the party's own separate property to
20 pay reasonable attorney's fees and costs in order to retain legal
21 counsel in the proceeding. A party who uses community property
22 or quasi-community property to pay his or her attorney's retainer
23 for fees and costs under this provision shall account to the
24 community for the use of the property. A party who uses other
25 property that is subsequently determined to be the separate
26 property of the other party to pay his or her attorney's retainer for
27 fees and costs under this provision shall account to the other party
28 for the use of the property.

29 (3) Restraining both parties from cashing, borrowing against,
30 canceling, transferring, disposing of, or changing the beneficiaries
31 of any insurance or other coverage, including life, health,
32 automobile, and disability, held for the benefit of the parties and
33 their child or children for whom support may be ordered.

34 (4) Restraining both parties from creating a nonprobate
35 transfer or modifying a nonprobate transfer in a manner that affects
36 the disposition of property subject to the transfer, without the
37 written consent of the other party or an order of the court.

38 (b) Nothing in this section restrains any of the following:

39 (1) Creation, modification, or revocation of a will.



1 (2) Revocation of a nonprobate transfer, including a revocable
 2 trust, pursuant to the instrument, provided that notice of the change
 3 is filed and served on the other party before the change takes effect.

4 (3) Elimination of a right of survivorship to property, provided
 5 that notice of the change is filed and served on the other party
 6 before the change takes effect.

7 (4) Creation of an unfunded revocable or irrevocable trust.

8 (5) Execution and filing of a disclaimer pursuant to Part 8
 9 (commencing with Section 260) of Division 2 of the Probate Code.

10 (c) In all actions filed on and after January 1, 1995, the
 11 summons shall contain the following notice:

12 “WARNING: California law provides that, for purposes of
 13 division of property upon dissolution of marriage or legal
 14 separation, property acquired by the parties during marriage in
 15 joint form is presumed to be community property. If either party
 16 to this action should die before the jointly held community
 17 property is divided, the language of how title is held in the deed
 18 (i.e., joint tenancy, tenants in common, or community property)
 19 will be controlling and not the community property presumption.
 20 You should consult your attorney if you want the community
 21 property presumption to be written into the recorded title to the
 22 property.”

23 (d) For the purposes of this section:

24 (1) “Nonprobate transfer” means an instrument, other than a
 25 will, that makes a transfer of property on death, including a
 26 revocable trust, pay on death account in a financial institution,
 27 Totten trust, transfer on death registration of personal property, or
 28 other instrument of a type described in Section 5000 of the Probate
 29 Code.

30 (2) “Nonprobate transfer” does not include a provision for the
 31 transfer of property on death in an insurance policy or other
 32 coverage held for the benefit of the parties and their child or
 33 children for whom support may be ordered, to the extent that the
 34 provision is subject to paragraph (3) of subdivision (a).

35 (e) *The restraining order included in the summons shall include*
 36 *descriptions of the notices required by paragraphs (2) and (3) of*
 37 *subdivision (b).*

38 SEC. 3. Section 5003 of the Probate Code is amended to read:

39 5003. (a) A holder of property under an instrument of a type
 40 described in Section 5000 may transfer the property in compliance



1 with a provision for a nonprobate transfer on death that satisfies the
2 terms of the instrument, whether or not the transfer is consistent
3 with the beneficial ownership of the property as between the
4 person who executed the provision for transfer of the property and
5 other persons having an interest in the property or their successors,
6 and whether or not the transfer is consistent with the rights of the
7 person named as beneficiary.

8 (b) Except as provided in this subdivision, no notice or other
9 information shown to have been available to the holder of the
10 property affects the right of the holder to the protection provided
11 by subdivision (a). The protection provided by subdivision (a)
12 does not extend to a transfer made after either of the following
13 events:

14 (1) The holder of the property has been served with a contrary
15 court order.

16 (2) The holder of the property has been served with a written
17 notice of a person claiming an adverse interest in the property.
18 However, this paragraph does not apply to a pension plan to the
19 extent the transfer is a periodic payment pursuant to the plan.

20 (c) The protection provided by this section does not affect the
21 rights of the person who executed the provision for transfer of the
22 property and other persons having an interest in the property or
23 their successors in disputes among themselves concerning the
24 beneficial ownership of the property.

25 (d) The protection provided by this section is not exclusive of
26 any protection provided the holder of the property by any other
27 provision of law.

28 (e) A person shall not serve notice under paragraph (2) of
29 subdivision (b) in bad faith. If the court in an action or proceeding
30 relating to the rights of the parties determines that a person has
31 served notice under paragraph (2) of subdivision (b) in bad faith,
32 the court shall award against the person the cost of the action or
33 proceeding, including a reasonable attorney's fee, and the
34 damages caused by the service.

35 SEC. 4. Section 5302 of the Probate Code is amended to read:
36 5302. Subject to Section 5600:

37 (a) Sums remaining on deposit at the death of a party to a joint
38 account belong to the surviving party or parties as against the estate
39 of the decedent unless there is clear and convincing evidence of a
40 different intent. If there are two or more surviving parties, their



1 respective ownerships during lifetime are in proportion to their
2 previous ownership interests under Section 5301 augmented by an
3 equal share for each survivor of any interest the decedent may have
4 owned in the account immediately before the decedent's death;
5 and the right of survivorship continues between the surviving
6 parties.

7 (b) If the account is a P.O.D. account:

8 (1) On death of one of two or more parties, the rights to any
9 sums remaining on deposit are governed by subdivision (a).

10 (2) On death of the sole party or of the survivor of two or more
11 parties, (A) any sums remaining on deposit belong to the P.O.D.
12 payee or payees if surviving, or to the survivor of them if one or
13 more die before the party, (B) if two or more P.O.D. payees
14 survive, any sums remaining on deposit belong to them in equal
15 and undivided shares unless the terms of the account or deposit
16 agreement expressly provide for different shares, and (C) if two or
17 more P.O.D. payees survive, there is no right of survivorship in the
18 event of death of a P.O.D. payee thereafter unless the terms of the
19 account or deposit agreement expressly provide for survivorship
20 between them.

21 (c) If the account is a Totten trust account:

22 (1) On death of one of two or more trustees, the rights to any
23 sums remaining on deposit are governed by subdivision (a).

24 (2) On death of the sole trustee or the survivor of two or more
25 trustees, (A) any sums remaining on deposit belong to the person
26 or persons named as beneficiaries, if surviving, or to the survivor
27 of them if one or more die before the trustee, unless there is clear
28 and convincing evidence of a different intent, (B) if two or more
29 beneficiaries survive, any sums remaining on deposit belong to
30 them in equal and undivided shares unless the terms of the account
31 or deposit agreement expressly provide for different shares, and
32 (C) if two or more beneficiaries survive, there is no right of
33 survivorship in event of death of any beneficiary thereafter unless
34 the terms of the account or deposit agreement expressly provide
35 for survivorship between them.

36 (d) In other cases, the death of any party to a multiple-party
37 account has no effect on beneficial ownership of the account other
38 than to transfer the rights of the decedent as part of the decedent's
39 estate.



1 (e) A right of survivorship arising from the express terms of the
2 account or under this section, a beneficiary designation in a Totten
3 trust account, or a P.O.D. payee designation, cannot be changed by
4 will.

5 SEC. 5. Part 4 (commencing with Section 5600) is added to
6 Division 5 of the Probate Code, to read:

7
8 PART 4. NONPROBATE TRANSFER TO FORMER
9 SPOUSE

10
11 5600. (a) Except as provided in subdivision (b), a nonprobate
12 transfer to the transferor's former spouse, in an instrument
13 executed by the transferor before or during the marriage, fails if,
14 at the time of the transferor's death, the former spouse is not the
15 transferor's surviving spouse as defined in Section 78.

16 (b) Subdivision (a) does not cause a nonprobate transfer to fail
17 in any of the following cases:

18 (1) The nonprobate transfer is not subject to revocation by the
19 transferor at the time of the transferor's death.

20 (2) There is clear and convincing evidence that the transferor
21 intended to preserve the nonprobate transfer to the former spouse.

22 (3) A court order that the nonprobate transfer be maintained on
23 behalf of the former spouse is in effect at the time of the
24 transferor's death.

25 (c) Where a nonprobate transfer fails by operation of this
26 section, the instrument making the nonprobate transfer shall be
27 treated as it would if the former spouse failed to survive the
28 transferor.

29 (d) Nothing in this section affects the rights of a subsequent
30 purchaser or encumbrancer for value in good faith who relies on
31 the apparent failure of a nonprobate transfer under this section or
32 who lacks knowledge of the failure of a nonprobate transfer under
33 this section.

34 (e) As used in this section, "nonprobate transfer" means a
35 provision, other than a provision of a life insurance policy, of
36 either of the following types:

37 (1) A provision of a type described in Section 5000.

38 (2) A provision in an instrument that operates on death, other
39 than a will, conferring a power of appointment or naming a trustee.



1 5601. (a) Except as provided in subdivision (b), a joint
2 tenancy between the decedent and the decedent's former spouse,
3 created before or during the marriage, is severed as to the
4 decedent's interest if, at the time of the decedent's death, the
5 former spouse is not the decedent's surviving spouse as defined in
6 Section 78.

7 (b) Subdivision (a) does not sever a joint tenancy in either of
8 the following cases:

9 (1) The joint tenancy is not subject to severance by the decedent
10 at the time of the decedent's death.

11 (2) There is clear and convincing evidence that the decedent
12 intended to preserve the joint tenancy in favor of the former
13 spouse.

14 (c) Nothing in this section affects the rights of a subsequent
15 purchaser or encumbrancer for value in good faith who relies on
16 an apparent severance under this section or who lacks knowledge
17 of a severance under this section.

18 5602. (a) Nothing in this part affects the rights of a purchaser
19 or encumbrancer of real property for value who in good faith relies
20 on an affidavit or a declaration under penalty of perjury under the
21 laws of this state that states all of the following:

22 (1) The name of the decedent.

23 (2) The date and place of the decedent's death.

24 (3) A description of the real property transferred to the affiant
25 or declarant by an instrument making a nonprobate transfer or by
26 operation of joint tenancy survivorship.

27 (4) Either of the following, as appropriate:

28 (A) The affiant or declarant is the surviving spouse of the
29 decedent.

30 (B) The affiant or declarant is not the surviving spouse of the
31 decedent, but the rights of the affiant or declarant to the described
32 property are not affected by Section 5600 or 5601.

33 (b) A person relying on an affidavit or declaration made
34 pursuant to subdivision (a) has no duty to inquire into the truth of
35 the matters stated in the affidavit or declaration.

36 (c) An affidavit or declaration made pursuant to subdivision (a)
37 may be recorded.

38 5603. Nothing in this part is intended to limit the court's
39 authority to order a party to a dissolution or annulment of marriage
40 to maintain the former spouse as a beneficiary on any nonprobate



1 transfer described in this part, or to preserve a joint tenancy in
2 favor of the former spouse.

3 5604. (a) This part is operative on January 1, 2002.

4 (b) Except as provided in subdivision (c), this part applies to an
5 instrument making a nonprobate transfer or creating a joint
6 tenancy whether executed before, on, or after the operative date of
7 this part.

8 (c) Sections 5600 and 5601 do not apply, and the applicable law
9 in effect before the operative date of this part applies, to an
10 instrument making a nonprobate transfer or creating a joint
11 tenancy in either of the following circumstances:

12 (1) The person making the nonprobate transfer or creating the
13 joint tenancy dies before the operative date of this part.

14 (2) The dissolution of marriage or other event that terminates
15 the status of the nonprobate transfer beneficiary or joint tenant as
16 a surviving spouse occurs before the operative date of this part.

17 SEC. 6. Section 6202 of the Probate Code is repealed.

18 SEC. 7. Section 21111 of the Probate Code is amended to
19 read:

20 21111. Except as provided in Section 21110:

21 (a) If a transfer, other than a residuary gift or a transfer of a
22 future interest, fails for any reason, the property is transferred as
23 follows:

24 (1) If the transferring instrument provides for an alternative
25 disposition in the event the transfer fails, the property is transferred
26 according to the terms of the instrument.

27 (2) If the transferring instrument does not provide for an
28 alternative disposition but does provide for the transfer of a
29 residue, the property becomes a part of the residue transferred
30 under the instrument.

31 (3) If the transferring instrument does not provide for an
32 alternative disposition and does not provide for the transfer of a
33 residue, the property is transferred to the decedent's estate.

34 (b) If a residuary gift or a future interest is transferred to two
35 or more persons and the share of a transferee fails for any reason,
36 the share passes to the other transferees in proportion to their other
37 interest in the residuary gift or the future interest.

38 SEC. 8. Notwithstanding Section 17610 of the Government
39 Code, if the Commission on State Mandates determines that this
40 act contains costs mandated by the state, reimbursement to local



1 agencies and school districts for those costs shall be made pursuant
2 to Part 7 (commencing with Section 17500) of Division 4 of Title
3 2 of the Government Code. If the statewide cost of the claim for
4 reimbursement does not exceed one million dollars (\$1,000,000),
5 reimbursement shall be made from the State Mandates Claims
6 Fund.

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